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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,230	03/17/2004	Mark Nicely	WAGER04-02	3546
7590 08/11/2004 Anderson & Morishita, L.L.C. Suite 102 2725 S. Jones Blvd. Las Vegas, NV 89146			EXAMINER JONES, SCOTT E	
			ART UNIT 3713	PAPER NUMBER

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

JW

<b>Office Action Summary</b>	<b>Application No.</b> 10/802,230	<b>Applicant(s)</b> NICELY, MARK	
	<b>Examiner</b> Scott E. Jones	<b>Art Unit</b> 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters; prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In claim 23, the limitation, “comprising said processor comparing configured to include data corresponding to at least one wagering strategy, to compare” is unclear. It appears the remainder of the claim was inadvertently omitted by Applicant.

Correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarne's.

Scarne's discloses a number of betting systems utilized by player's in a casino to gamble. In particular, Scarne's discloses the Martingale and Great Martingale systems, as well as, the D'Alembert system. In the Martingale and Great Martingale systems, the basic idea is that whenever a player loses a bet, he/she doubles or increases

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the next bet or bets until he/she makes a win that recoups all of his/her previous losses and leaves the player with a one unit profit. Scarne's also discloses the mathematical iterations a player would encounter in an actual game (Pages 410-411). The D'Alembert system is based on the "law of equilibrium". The theory is that any two opposite chances, such as red and black, odd and even (in a roulette game), must sooner or later win an equal number of times (Page 411). What Scarne's lacks disclosing is an electronic device that automatically computes the player's bets based on the outcome of a gambling game for different gambling systems, such as, the Martingale system. However, it would have been obvious at the time of Applicant's invention to implement the Martingale system in a gaming machine as described in Scarne's. First, each was notoriously well known in the gaming arts at the time of Applicant's invention. Secondly, *In re Venner*, the court held that broadly providing an automatic or mechanical means (electronic Martingale type gambling system) to replace a manual activity (the Martingale system described in Scarne's) which accomplished the same result is not sufficient to distinguish over the prior art. See MPEP 2144.04.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Hallman, Jr. et al. '549, Monfort '164, Armstrong et al. '600, Colavita '009, Rudd '474, and Goldberg et al. '702 disclose systems and methods for player's and croupier's to calculate wins and loses in gambling games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (703) 308-

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7133. The examiner can normally be reached on Monday - Thursday, 6:30 A.M. - 5:00 P.M..

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott E. Jones  
Examiner  
Art Unit 3713

A handwritten signature in black ink that reads "Scott E. Jones". The signature is written in a cursive style with a large, stylized "S" and "J".

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